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Ending the Exploitation of the Vulnerable: The Promise of the Intersection of American Bioethics, Human Rights, and Health Law

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Abstract

Traditionally, American bioethics has served as a safety net for the rich and powerful, for they are not forced to act as research subjects to obtain access to general health care for themselves or their children. However, American bioethics has failed to protect the vulnerable, i.e. indigent minorities. The vulnerable are not treated the same as the rich. They do not have access to health care. They are exploited in clinical trials that promise monetary gain or access to health care and their autonomy rights are often ignored. Some of the vulnerable most affected by these disparities are African-Americans. African-Americans have less access to care, less physician visits and hospitalization, than whites even though the evidence shows that serious illness is much more common among blacks than whites. Furthermore, African-Americans continue to be targeted to participate in dangerous clinical trials, with limited direct benefits, with the promise of monetary gain or access to health care. Finally, the autonomy rights of Africans-Americans to consent to all means of treatment or tests are often ignored.

Instead of serving as a means to promote justice and end these racial disparities in accessing health care or participation in dangerous research studies, American bioethics has tended to focus its attention on ethical issues associated with scientific and medical advances without recognizing that these developments occur in a social context that must be taken into account if the ethical issues are to be adequately addressed. American bioethics fails to take into consideration the social and economic conditions, such as poverty and de facto discrimination through disparate impact that influence research subjects' decisions to participate in dangerous research studies, with diminutive direct benefit, to obtain access to health care and monetary support. The continuation of these racial disparities in access to care and exploitation of minority populations for dangerous clinical trials after the creation of American bioethics can no longer be ignored.

American bioethics is replete with instances of de facto discrimination through disparate impact that pervert the physician-patient and research-subject relationships, such as the necessary informed consent for participation in clinical trials or drug testing. Without reflecting and rectifying the de facto discrimination through disparate impact that continues to allow the

vulnerable to be exploited for the benefit of society under American bioethics principles, the same exploitation will continue with the inclusion of human rights. Now physicians, researchers, and government agencies that have ignored or misused the principles of bioethics, will only need to ignore or manipulate another set of rules in order to obtain the outcomes they desire: limit access to health care and the exploitation of the vulnerable for the benefit of science. In fact, the inclusion of human rights will serve to legitimize their violations both in America and abroad. The addition of health law does not solve this problem because courts rarely acknowledge or punish perpetrators for their de facto discrimination through disparate impact.

Courts reviewing issues concerning health law do not acknowledge or address the presence of de facto discrimination in their decisions even when it is clear that race was significant factor. Moreover, the enforcement of Title VI, which prohibits racial discrimination in health care, is illusory at best. To date, the federal government has never filed a federal case under Title VI to protect minorities from racial discrimination in health care. Therefore, African-Americans' bear the burden of filing cases, which have included claims concerning the lack of access to health care. Usually these cases are based on a theory of discrimination as a result of disparate impact of health policies. Recently, the Supreme Court barred private parties from bringing Title VI case based on a theory of discrimination through disparate impact. Thus, the inclusion of law, or more specifically health law, does not afford African-Americans much protection against the effects of discrimination.

To end the exploitation of the vulnerable through the intersection of American bioethics, human rights, and health law, American bioethicists must admit that race matters, as the underlying cause for inequalities in health care present in governmental access to health care, research studies, and one-on-one doctor-patient relationships. American bioethicists must end the exploitation of the vulnerable through the eradication of de facto discrimination. The government must impose and enforce meaningful sanctions to address the lack of access to care, to prevent continued exploitation, and to prohibit the violation of the autonomy rights of the vulnerable based on discrimination. Moreover, bioethicists must defame any government, researcher, or physician that fail to comply with these standards. This book review will focus on the means by which to end the exploitation of the vulnerable.

Keywords: human rights, bioethics, health law, clinical trials, vulnerable, race

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